

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HENRY TUCKER, *on behalf of himself  
and all other persons similarly situated,*

Plaintiff,

-v.-

ULTA BEAUTY, INC.,

Defendant.

19 Civ. 9845 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

On January 31, 2020, the Court held a pre-motion conference concerning Defendant's anticipated motion to dismiss. (Dkt. #24 (January 31, 2020 transcript)). During that conference, the Court set a briefing schedule for the motion. Plaintiff's counsel stated that Plaintiff might file an amended complaint and suggested that Plaintiff be given a deadline of February 14, 2020, to do so. (Dkt. #24 at 12:15-13:1). The Court is thus understandably disappointed to see Plaintiff file a First Amended Complaint on March 19, 2020, after Defendant's opening brief and more than a month after the deadline that the Court set at Plaintiff's counsel's suggestion. (Dkt. #35). Further, the Court cannot credit Plaintiff's counsel's present assertion that he believed the deadline to file an amended complaint was April 1, 2020. (Dkt. #37). The transcript of the January 31, 2020 proceeding could not be clearer: Plaintiff was to file an amended complaint on or before February 14, 2020, and could file an opposition brief to Defendant's anticipated motion to dismiss on or before April 1, 2020. (Dkt. #24).

Nevertheless, Plaintiff does have the right to amend his complaint once within 21 days after the service of Defendant's Rule 12(b) motion, which was filed on March 2, 2020. (Dkt. #27, 28). Fed. R. Civ. P. 15(a)(1)(B). Further, the Second Circuit has a "strong preference for resolving disputes on the merits," and has held that the right to amend a complaint is not extinguished when a plaintiff attends a pre-motion conference and declines to amend the complaint before having seen the motion to dismiss itself. *Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC*, 797 F.3d 160, 190 (2d Cir. 2015) (citing *Williams v. Citigroup Inc.*, 659 F.3d 208, 212-13 (2d Cir. 2011) (per curiam)).

For these reasons, the Court will accept the First Amended Complaint, and hereby DENIES Defendant's motion to strike. (Dkt. #36). Defendant shall have until April 17, 2020, to either: (i) file a responsive pleading, should it wish to withdraw its motion to dismiss; or (ii) file a letter supplementing its pending motion to dismiss in light of the First Amended Complaint, should it wish to proceed with its motion to dismiss. If Defendant files a supplemental letter in support of its motion to dismiss, Plaintiff shall file its papers opposing the motion to dismiss on or before May 15, 2020. In that case, Defendant shall file its reply papers, if any, on or before May 29, 2020.

SO ORDERED.

Dated: March 27, 2020  
New York, New York



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KATHERINE POLK FAILLA  
United States District Judge